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June 7, 2012

VIA ECF

Hon. Joseph F. Bianco
United States District Court
Eastern District of New York
Alfonse M. D'Amato U.S. Courthouse
100 Federal Plaza, Room 924
Central Islip, NY 11722

Re: USA v. William E. Schaefer
Case No.: 09-CR-695 (JFB)

Dear Judge Bianco:

Following our last court conference on Monday, June 4, 2012, the government has made available all fourteen (14) videos apparently downloaded and/or stored on the defendant's personal computer. Selected images from five (5) of these videos were actually utilized at trial by the government as direct evidence that the defendant had stored on his computer visual images of minors engaging in "sexually explicit conduct" as defined under 18 USC § 2256. However, only two (2) of these videos were actually reviewed by U.S. Probation Officer Angelica Deniz ("Masha 4-3" and "Darkseductress 59409") as part of the "Presentence Investigation Report" prepared in this case and dated February 24, 2012.

As part of the sentencing guideline calculations for this offense, the Probation Department has utilized Guideline 2G2.2, Note (4)(B)(ii) that "each video" shall be considered (or presumed) to contain seventy-five (75) child pornography images. Therefore, the presentence report calculates that all fourteen (14) of these videos contains 1,050 images of child pornography (14 x 75), even though at least seven (7) of these videos were never seen or reviewed by the probation department.

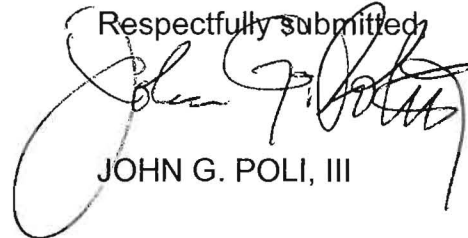
Accordingly, your honor permitted defense counsel (and Probation Officer Angelica Deniz) to review all of these other videos prior to sentencing the defendant to ascertain whether or not this presumption of at least seventy-five (75) child pornography images contained in all of these unreviewed videos is a fair, reasonable and objective assessment under this specific sentencing guideline.

On Wednesday, June 7, 2012 at about 11:00 A.M., the government supervised an unrestricted review of the images contained on all fourteen (14) of these videos by the undersigned and Probation Officer Angelica Deniz.

Following this review of these videos, it is now my opinion that any objective observer of many of these visual images and/or visual depictions displayed on all of these videos constitute "child pornography" as it is broadly defined in 18 U.S.C. § 2256. Furthermore, most of these videos exceed five (5) minutes in length.

In conclusion, therefore, I shall strongly recommend that the defendant agree to withdraw any objection to the "Offense Level Calculation" in paragraph 17 of the "Presentence Investigation Report" which increases the base offense level by five (5) points pursuant to Guideline 2G2.2(b)(7)(D) [offense involves 600 or more images].

Thank you for your continuing courtesies herein.

Respectfully submitted,

JOHN G. POLI, III

JGP/rp

cc: AUSA Allen L. Bode (via ECF)
AUSA Michael P. Canty (via ECF)